IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO : 21590 of 2004

Between:

Sri Gangishetty Raghunandan, S/o. G. Nagabhushanam (Late)
R/o.3-3-844, Kutbiguda, Kachiguda, Hyd.27.

..... PETITIONER

AND

1 State of A.P., rep. by Secretary,
Transport Department Secretariat, Hyderabad.
2 The Addl. Commissioner of Police, (Traffic) Red Hills, Hyderabad.
3 The Commissioner, Municipal Corporation of Hyd. Burgularamakrishna Rao Bhavan, Saifabad, Hyd.
4 The Jt. Commissioner, R.T.A., Somajiguda, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the R-2 in prescribing and enforcing the rule of wearing helmet by two wheeler driver from 17th November 2004 onwards and seizing the documents from the driver, compelling them to counselling as arbitrary, illegal, unwarranted and without jurisdiction, without authority of law, unsustainable being violation of the Art. 14 & 21 of the Constitution of India and set aside the said rule and consequently to direct the respondents herein not to insist the two wheeler driver to wear helmet compulsorily.

Counsel for the Petitioner:MR.KRISHNA DEVAN

Counsel for the Respondents 1 and 4: G.P. for Transports

Counsel for the Respondent No.2: GP FOR HOME

Counsel for the Respondent No.3: Mr. Ghanta rama Rao, S.C. for M.C.H.

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

On 25.11.2004 in the interim order reference was made to certain facts leading to filing of the Writ Petition and to a decision of a Division Bench this Court in **Dr. C.S. SUBBA RAO v. SECRETARY TO GOVERNMENT OF A.P. & OTHERS** and also to the decision of the Supreme Court in **AJAY CANU v. UNION OF INDIA & OTHERS**.

Writ petition was adjourned only to enable the Respondents to apprise us about the availability of helmets and the possibility, if any, to accord some more time for the strict compliance of the Rule in question.

Sri C.L.N. Gandhi, Joint Transport Commissioner, R.T.A., Hyderabad has filed his affidavit stating that as per the records, there are 14.4 lakhs two wheelers registered with the Transport Department in the Districts of Hyderabad and Rangareddy. As per the survey and estimates of the Transport Department, about 3 to 4 lakhs two-wheeler riders are still without helmets. It is stated that to enable the public to acquire helmets, the Department has adopted a liberal attitude and decided not to compound the offence, but subject the people to an awareness programme of counselling at selected places which is restricted to four days a week. The duration of the counselling is about 60 minutes (40 minutes a video show, 20 minutes quiz programme and a short speech). It is stated that though the awareness programme was to commence on 3.11.2004, but, it was deferred for ten days to enable the general public to acquire helmets within that period. The Government of Andhra Pradesh, in the meanwhile, has issued orders, vide G.O.Ms.No.931, dated 11.11.2004 exempting the helmets from the levy of A.P. General Sales Tax up to

31.3.2005.

As regards the availability of helmets, it is stated that All India Helmet Manufacturers Association had organized a Helmet Mela at the Institution of Engineers, Hyderabad from 19.11.2004 to 26.11.2004 and another mela is being organized from 29.11.2004 to 9.12.2004 at YMCA, Secunderabad. It is stated that there are about 16 helmet manufacturers in the country manufacturing helmets of different brands and each brand has about 14 to 15 variants. The Officers of the Transport Department and the Traffic Police have been directed to be courteous with public whenever they stop a driving two-wheeler without helmet for issuing Awareness Programme Notices. It is stated that there are about 75,000 helmets available in the City as of today. The stock and sale of helmets is being monitored to ensure continuous sale of helmets as per the requirement. In addition to this, the legal Metrology Department has also been requested to monitor the prices of helmets and to ensure sale of standard quality helmets only without sales tax. Every care is being taken to ensure availability of sufficient stock to enable the general public to acquire helmets. It is also stated that time has been extended by the Department up to 31.12.2004 for awareness programmes before strict enforcement of the Rule.

As was noticed in the earlier, writ petition has been filed by one Gangishetty Raghunandan as PIL to declare the action of the 2nd respondent in prescribing and enforcing the Rule of wearing helmets by two-wheeler drivers and pillion riders from 17.11.2004 onwards, and seizing the documents from the drivers thereby compelling them to counselling as arbitrary, illegal, unwarranted and without jurisdiction.

Section 129 of the Motor Vehicles Act, 1988 (for brevity 'the Act') makes it obligatory on every person driving or riding a two-wheeler to wear in public places a protective headgear conforming to the standards of Bureau of Indian Standards. Only a person who is a 'sikh' wearing turban, while driving or riding a motorcycle, is exempt from the said Rule. The State Governments have been empowered to provide such other exceptions, as they may deem fit.

In the instant case, the State Government has not carved out any exception. On an earlier occasion, when the State Government granted some relaxation, the same was challenged and a Division Bench of this Court struck down the said G.O. by its judgment reported as **Dr. C.S. SUBBA RAO's case (supra)**. The Supreme Court has in **AJAY CANU's case (supra)** considered the legality and validity of

Rule 498-A of the Andhra Pradesh Motor Vehicles Rules, 1964 and of a notification dated 8.7.1986 issued by the Commissioner of Police, Hyderabad and Secunderabad, in exercise of his powers under Section 21(1) of the Hyderabad City Police Act. The notification, inter alia, was to the effect that in order to ensure adequate safety of two-wheeler riders, wearing of protective helmets is compulsory. The Rule was made effective from 1st August, 1986. A writ petition was filed before this Court as PIL by a student having a permanent driving licence for a two-wheeler vehicle on the ground that the said notification was violative of fundamental rights as guaranteed under Articles 19(1)(d) and 21 of the Constitution. His argument before this Court was that Section 85-A of the Motor Vehicles Act, 1939 was yet to be enforced; therefore, Rule 498-A of A.P. Motor Vehicles Rules was illegal and ultra vires the Motor Vehicles Act so also the notification. He also raised a question that wearing of helmets had adverse effect on the rider and also prevented free flow of breeze to the head resulting in giddiness and affecting sight and hearing. The High Court overruling the contentions of the petitioner, upheld the legality and validity of the Rule. The High Court had also relied upon medical opinions of Neuro-surgeons of repute and arrived at a finding that wearing of helmets would not cause any ailment whatsoever as was contended by the petitioner. The petitioner carried the matter to the Supreme Court. The Supreme Court examined in detail the challenge to the validity of the Rule and also considered the provisions of section 85-A of the Motor Vehicles Act, 1939 which now corresponds to Section 129 of Motor Vehicles Act, 1988. The Supreme Court held that the rule under challenge providing for compulsory wearing of crash helmets by drivers of two-wheelers was not violative of Articles 19(1)(d) and 21 of the Constitution and Rule was for the public good. Restriction, if any, put by the Rule was held to be reasonable. It was also held that any act aimed at doing public good is not violative of any fundamental right.

In the light of the ratio of decision of the Supreme Court in **AJAY CANU's case (supra),** we do not find any substance in this petition. Even otherwise also, we do not find any public interest involved in such like petition, which questions the very act of the respondents in enforcing a provision which has been inserted in the statute book for the benefit, welfare and safe journey of a citizen driving or riding a two-wheeler vehicle. The provision is aimed at prevention of any accident being fatal to the driver and pillion rider of a two-wheeler in an accident causing annoyance and obstruction to the free flow of traffic. We may also add that Section

177 of the Act makes contravention of any provisions of Act or any of the rules framed thereunder punishable. Therefore, the petitioner cannot seek a direction against the respondents not to implement a provision of the Act, violation of which would be an offence. Not implementing the provision of the Act can be said to be contrary to public interest but not an act, which has the effect of enforcing the provisions of the Act.

We may also observe here that the petition though filed by a government employee but has been drafted by an Advocate. It is a petition purported to be in public interest. In no part of the petition there is any reference to Section 129 of the Act or to the judgment of the Supreme Court or of this Court. There is also no challenge to Section 129 of the Act. Filing of such a petition as PIL without taking adequate care and caution and without looking into the provisions of law or the relevant bindings judgments has to be deprecated. Before filing such a petition, adequate care ought to have been taken at least to look into the relevant rules, regulations and the law on the subject. The petitioner appears to have hastened to approach the Court seemingly to earn popularity of taking up a cause, which can never be termed as a public cause.

There is no arbitrariness in the action of the respondents, who have already given enough latitude of going slow in the implementation of the provisions of the Motor Vehicles Act and in order to achieve the objective, the respondents have also undertaken compulsory counselling and awareness programme for the benefit of the general public. The provision has been on the statute book even prior to coming into force of the 1988 Act and since the public was not adhering to such a provisions, necessarily the respondents had to come forward and make an effort to give counselling before ensuring strict compliance of the rules. Such an act of compulsory counselling and to bring awareness cannot be said to be arbitrary or irrational but we place on record our due appreciation for such an act of respondents in resorting to counselling and awareness programmes before strict enforcement of the provisions of the Act and the rules.

We find no substance in the petition. The writ petition is accordingly dismissed. No costs.

DEVINDER GUPTA, CJ

30th November, 2004

G. ROHINI, J

Pnb/

Sarfraz/vtv

LR COPY TO BE MARKED: YES

To

1 The Secretary, Transport Department, State of A.P.,
Secretariat, Hyderabad.
2 The Addl. Commissioner of Police (Traffic), Red Hills, Hyderabad.
3 The Commissioner, Municipal Corporation of Hyd. Burgularamakrishna

Rao Bhavan, Saifabad, Hyd.
4 The Jt. Commissioner, R.T.A., Somajiguda, Hyderabad.

5. Two C.Cs. to the Government Pleader for Home, High Court Buildings,

Hyderabad. (OUT)

6. Two C.D. copies

***THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE**

and

***THE HON'BLE Ms JUSTICE G. ROHINI**

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% 30th November, 2004.

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> Head Note:

? Cases referred:

2002 (6) ALD 447 (DB) (1988) 4 SCC 156